GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute:—Industrial Dispute between the Workmen and the Management of A.E.G. Engineering Co. of India, Ltd., 31, Kasturba Road, Bangalore-1.

Award of the Additional Industrial Tribunal, Bangalore—published.

Read the following papers:

(i) Letter No. 1043/70-71, dated the 30th/31st December 1970 from Shri S. T. Kulkarni, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE

Dated 29th of December 1970

Present

Shri S. T. Kulkarni, B.A. (HONS.), LL.B.,

Presiding Officer.

A.I.D. No. 1 *of* 1969

I Party—

Workmen of A.E.G. Engineering Co. of India Ltd., Bangalore-1, represented by the President, A.E.G. Engineering Employees' Union, 305, S.C. Road, Bangalore-9.

Vs.

II Party—

The Management of A.E.G. Engineering Co. of India, Ltd., 31, Kasturba Road, Bangalore-1.

Appearance

For I Party:—Sri K. Subba Rao, Advocate, Bangalore.

For II Party:—Sri P. P. Bopanna, Advocate, Bangalore.

AWARD

By No. FCL 1102 LLD 68, dated 14th March 1969 the Government of Mysore have referred an Industrial Dispute existing between the Workmen and Managment of A.E.G. Engineering Co. of India Ltd., 31, Kasturba Road, Bangalore-1, to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 on the following points of dispute :—

"Whether the management of A.E.G. Engineering Co. of India Ltd. 31, Kasturba Road, Bangalore-1, justified in terminating the services of M/s. (1) V. K. Yeshodharan, Electrician, Site Office, Bhadravathi (2) K. S. Kabir, Fitter, Site Office, Bhadravathi and (3) P. V. George, Fitter, Site Office, Bhadravathi ?

If not, are the above workmen entitled to reinstatement with back wages or to any other relief ?

II) Whether the following demands of the workmen of A.E.G. Engineering Co. of India Ltd Bangalore are justified ? If not to what other reliefs the workmen entitled ?

(i) Every employee should be issued three sets of uniforms each, each set consisting of a pair of trousers, a shirt and a pair of footwear.

(ii) Irrespective of the category of employees the same salaried group should have the same class and rates of entitlement to travel and daily allowance.

(iii) There should be a separate element of D.A. constituting the wage and it sh ould fluctuate with the cost of living index.

(iv) The above benefits should be given effect to from 1st January 1967."

2. After the receipt of the said reference it was numbered as A.I.D. No. 1 of 1969 on the file of this Tribunal, and notices were issued to both the parties, and the I Party put in its claims statement on 3rd June 1969, and the II Party filed its counter-statement on 26th June 1969, and thereafter the I Party filed its reply on 8th August 1969. In view of the contentions raised by both the parties the following issues were settled on 8th August 1969 and 8th September 1969 in addition to the points of reference :—

(1) Whether the dismissal of the said three employees is by way of—

(a) unfair labour practice ;

(b) victimisation, and

(c) opposed to principles of natural justice ?

(2) Whether the said dismissal is *malafide*, unjust and arbitrary ?

(3) Whether the business of the II Party does not constitute an industry within the meaning of the Industrial Disputes Act ?

(4) If yes, would the reference be valid ?

3. After the issues were settled the case was adjourned for evidence from time to time, and 3 witnesses (WW-1 to WW-3) were examined on behalf of the I Party and the documents at Exhibits W-1 to W-25 were got marked and those at Exhibits M-1 to M-5 were got marked for the I Party and the case was adjourned for further evidence. Before any further evidence was recorded both the parties filed a settlement regarding all the points of dispute on 24th December 1970, and they further admitted the contents thereof, and prayed that an Award may be passed in terms thereof. The terms of this settlement appear to be quite reasonable and in the interest of both the parties, and as

such I see no objection to pass an Award in terms thereof. Hence I pass the following Award :

AWARD

In view of the joint memo and settlement filed by both the parties, an Award is passed in terms of the said settlement, and it (Settlement) shall be treated as a part of the Award and shall be Annexed to it. No order as to costs.

29-12-1970

S. T. KULKARNI,
Presiding Officer,
Additional Industrial Tribunal Bangalore.

ANNEXURE

MEMORANDUM OF SETTLEMENT ARRIVED AT BETWEEN THE MANAGEMENT AND WORKMEN OF N.G.E.F.—A.E.G. ENGINEERING Co. LTD.

Representative of the N.G.E.F.-A.E.G. Engineering Company Limited (hereinafter called the 1st Party)—Mr. G. Kuhnke, Director.

Representative of A.E.G. Engineering Employees Union (hereinafter called the 2nd Party)—The Secretary, A.E.G. Engineering Employees Union, Bhadravathi.

Preamble :

The workmen of N.G.E.F.-A.E.G. Engineering Company Limited, Bangalore, through their registered trade Union presented their demands under a Charter of Demands, dated 10th July 1968 and in respect of these demands conciliation proceedings were instituted through the Deputy

Labour Commissioner, Bangalore. Conciliation proceedings having failed, some of the demands of the workers were referred to adjudication to the Additional Industrial Tribunal, Bangalore, in AID No. 1 of 1969. In respect of other demands which were not referred to adjudication by the Government of Mysore, the workmen had preferred a Writ Petition in the High Court of Mysore, Bangalore, in Writ Petition No. 3707/1969 and the said Petition is now pending before the Hgh Court of Mysore, Bangalore. Thereafter a complaint under Section 33-A of the Industrial Disputes Act was also filed by one of the workmen challenging the termination of his services and the said complaint is also pending as Complaint No. 1 in AID 1 of 1970 before the Additional Industrial Tribunal, Bangalore. While these cases are pending before the Courts referred above, the Management and the Workmen, represented by the Office bearers of 2nd Party in order to ensure industrial peace have arrived at this settlement after a series of discussions, the terms of which are herein contained and it is hereby agreed that in view of this settlement, the disputes pending in AID 1/1969 on the file of the Additional Industrial Tribunal, Bangalore and Writ Petition No. 3707 of 1969 on the file of the High Court of Mysore, Bangalore, are deemed to have been fully and finally settled and the 2nd Party will not raise any industrial dispute and will maintain industrial peace for a period of three years from this date.

In view of what is stated above the parties have arrived at this settlement on the following terms and conditions:

1. *Basic Wages*:

There shall be three wage grades applicable to the permanent workers as follows:

Skilled Workers

Grade I	Rs. 235–13–300–16–620
Grade II	Rs. 185–10–235–13–300
Grade III	Rs. 150–7–185–10–235

The revised basic salary of the workers have been fitted in the appropriate grade with effect from 1st April 1970 by adding such sums to the existing wages as is necessary to fit them in Grades I, II and III respectively to cover the increments to which the workmen are entitled to and is hereby agreed to be as per Annexure I to the settlement.

2. *D.A. and Outstanding Allowance* :

It is further agreed that the D.A. and Outstation Allowance payable to the workmen with effect from 1st October 1970 shal be as follows :

Dearness Allowance :

Workers drawing a basic wage below Rs. 150	Rs. 90 per mensum
Workers drawing between Rs. 151 to Rs. 200	Rs. 100 per mensum
Workers drawing between Rs. 201 to Rs. 275	Rs. 110 per mensum
Workers drawing between Rs. 276 to Rs. 350	Rs. 120 per mensum
Workers drawing Rs. 351 and above	Rs. 130 per mensum

The Dearness Allowance is based on All India Cost of Living Index base year 1960. For any subsequent rise in the Cost of Living Index the rise will be neutralised in the following manner :

Salary Group :

Upto Rs. 25'	Re. 1.00 per point per month
Between Rs. 250 to Rs. 400 "	Re. 0.75 per point per month
Above Rs. 400	Re. 0.60 per point per month

The adjustment would be made at the time of annual increment, *i.e.*, 1st April every year. First adjustment would be done on 1st April 1971.

The rise in the Index would be calculated with reference to the Index as on 1st April 1970 and simple arithmetical average of the Index during the preceding 12 months.

Outstanding Allowance :

Daily Allowance	Rs. 3.00 per day for the first 90 days.
Thereafter	Rs. 1.50 per day or Rs. 2.00 per day in case of Cities– Bombay, Madras, Calcutta, New and Old Delhi.

The allowance would be payable when worker is posted at a place other than Headquarters.

3 *Uniforms* :

The 1st Party will supply the workmen with 2 sets of Uniforms and one pair of rubber shoes every year and all the workmen shall report for duty and do their work only in the uniform and shoes provided by the 1st Party.

4 *Medical Benefits* :

The 1st Party will take out a Group Insurance Policy under which certain medical benefits would be available to every worker. The cost of the Insurance would be borne by the 1st Party. It would be possible for the employees to include their families under the Company's Group Insurance Policy provided they agree to pay the necessary additional premium.

5. *Class of Travel for Workers* :

It is agreed that the workers drawing more than Rs. 250 (Basic) would be eligible to travel by II Class. In any case workers irrespective of salaries will not be eligible for I Class. It is also understood that II Class facility would be actually availed of for claiming reimbursement. The eligibility to travel by II Class would be determined after effecting the revision of the wage scales.

6. *Termination Cases* :

Termination of services of 3 workmen Messrs. K. S. Kabir, P. V. George and V. K. Yeshodaran.

(a) The 2nd Party will be paid a sum of Rs. 4,000 as *ex-gratia* in full and final settlement of the demands of Mr. K. S. Kabir and compensation due to Messrs P. V. George and V. K. Yeshodaran.

(b) Messrs P. V. George and V. K. Yeshodaran will be given fresh employment without being put on probation by the 1st Party on the same scale of pay as they were drawing at the time of the termination of their services but without back wages and bonus, subject to fitment in the new grade to which they are entitled to provided they express their regret for their conduct on 25th August, 1968, to the 1st Party.

It is agreed further, that for the purpose of gratuity and other retirement benefits, their past services will be counted by the 1st Party.

7. *House Rent Allowance and Accommodation* :

The Management shall pay a sum of Rs. 30 per month as House Rent Allowance if the workmen are posted in Bangalore. This benefit is applicable to the workmen who are in field service when they are transferred to Bangalore. The existing rules regarding accommodation at places other than Bangalore shall continue to be applicable subject to the modification that if the Management is not in a position to arrange accommodation to the workmen, the workmen shall make their own arrangements and shall be entitled to be paid allowance as per existing rules but during such period, the workmen will not be entitled to any Outstation Allowance.

8. *Drivers, Wacthmen and Peons* :

The Drivers, Watchmen and Peons of the 1st Party shall be put in the following wage grades with effect from 1st December 1970.

Drivers Rs. 130–7–165–10–265 (Basic)

Watchmen	Rs. 60–5–85–6–145 (Basic)
Peons	Rs. 50–5–75–6–135 (Basic)

Fitment into these grades shall be so effected that these workmen will get a minimum rise of Rs. 20 in their wage scale with effect from 1st December 1970.

The D.A. and Outstation Allowance applicable to the Workmen in Para 2 above shall be made applicable to these Workmen also.

9. *Overtime Payments* :

In view of the increased emoluments of the workmen under this settlement, the workmen hereby agree that for purposes of calculation of overtime wages, overtime shall be calculated at one and a half times the wages (Basic and D.A.) for the first 30 hours of overtime per month and for the subsequent overtime period at the rate of two times the wages (Basic plus D.A.). This shall come in to effect from 1st December 1970.

10. *Lumpsum Compensation* :

To avoid any inequities in the matter of fitment of the workmen in the appropriate grade which is inevitable in a settlement of this nature and to compensate the workers for the loss of their D.A. if any from 1st April 1970 till date of revision of pay scales the 1st Party hereby agrees to pay a sum of Rs. 400 as compensation to each of the workmen listed in the annexure and the 2nd Party hereby agrees to receive the said sum in full and final settlement of any claims regarding fitment and loss of D.A. for the period aforesaid.

11. *Application of present Service Rules* :

For avoidance of any doubt, it is hereby agreed between the parties that the terms and conditions applicable to the employees covered under this settlement under the existing service rules of the Company shall continue to be applicable to the employees save as modified by the terms of this agreement.

12. *Period of settlement*:

It is hereby agreed between the parties for this settlement that this settlement shall be for a period of three years from this date and during this period the 2nd Party shall not raise any industrial dispute in respect of matters stated in the Preamble to this settlement and also other demands which may cause additional financial burden to the 1st Party and shall maintain industrial peace during the said period.

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals on this day.

For N.G.E.F.-A.E.G.E.N.G.G. Ltd.

Witnesses

1. (Sd.)
2. (Sd.)

(Sd.)
Director.
1st Party.

Witnesses

1. (Sd.)
2. (Sd.)

(Sd.)
Secretary.
2nd Party.

Bangalore,
Dated 14th December, 1970.

"True Copy"

29-12-70

S. T. KULKARNI,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

ANNEXURE I

REVISED BASIC SALARY AND GRADES OF WORKERS WITH EFFECT FROM 1ST APRIL 1970.

Name	*Revised Salary per month*
	Rs.
Grade I	
A. K. Paul	396
D. B. Solanki	396
B. J. Patel	316
G. S. Patel	316
A. V. Shivaraman	396
V. N. Patel	396
S. U. Khan	364
P. Gopalakrishnan	332
T. S. Velayudhan	300

Grade II

R. S. Sharma	287
Chacko Thomas	287
K. J. George	300
David Lukose	287
V. T. Philips	274
R. R. Mishra	274
B. B. Das	287
M. Z. Ahamad	261
N. G. Pillai	248
Chacko Yohannan	261
Abdul Shaffy	261
Bhup Singh	287
A. B. Singh	261
R. B. Yadav	261
Ramdular Bhagelloo	248
Motilal Prasad Shah	235
B. V. Patel	235
V. R. Joseph	287
P. Ganapathy	248

Grade III

Srinivas Singh	171
M. N. Bhol	171
S. K. Nayak	171
R. R. Patel	195
V. K. Prabhakaran	195
C. K. M. Nair	195
Ajit Singh Burme	195
Pyaralal Sharma	150
N. Shivadasan	195
K. S. Balakrishnan	225

Drivers

B. S. Gopal Rao	175

(Sd.)

(Sd.)

"True Copy"

29-12-70

S. T. KULKARNI,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

ORDER

Bangalore, dated the 11th January 1971

S.O. 247.—WHEREAS by State Government Order No. FCL 1102 LLD 68, dated 14th March 1969 the Industrial Dispute between the Workmen and the Management of A.E.G. Engineering Co. of India Ltd., Kasturba Road, Bangalore-1, was referred to the Additional Industrial Tribunal, Bangalore for adjudication.

AND WHEREAS the Additional Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 2 LLA 71]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
1745 *Food, Civil Supplies and Labour Department.*

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the Management of M/s. Pandya Jeevanlal & Co., Mangalore.

Award of the Labour Court, Mangalore published.

Read the following papers:

(i) Letter No. A/ID/77/70-71, dated 15th December 1970 from Sri Mohd. Hameeduddin Khan, Presiding Officer, Labour Court, Mangalore

BEFORE THE LABOUR COURT AT MANGALORE

Dated 15th December 1970

Reference (ID) (LCM) No. 77 of 1969

Present;

Mohd. Hameeduddin Khan, B.SC., LL.B.,

Presiding Officer.

Between :—

The Workmen represented by the Secretary, S. K. Coffee, Cardamom & Allied Workers Union, Maidan Road, Mangalore-1. *I Party*

and

The Management of M/s. Pandya Jeevanlal & Co., Mangalore .. *II Party*

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. Pandya Jeevanlal & Co., Mangalore referred it under Section 10(1)(c) of the Industrial Disputes Act, 1947 *vide* Order No. FCL 989 LLD 68,

dated 15th December 1969 to this Labour Court at Mangalore for adjudication on the following points of dispute :

" I. Are the Management of M/s. Pandya Jeevanlal & Co., Mangalore, justified in refusing employment to the following women workers ?

1. Smt. Sumathi
2. Kumari Kamalakshi
3. Kumari Sarala
4. Kumari Puspa
5. Kumari Sakku

II. If not, to what relief are these workers entitled ? ".

2. On receipt of the reference on 17th December 1969 it was registered as Reference (ID)(LCM) No. 77 of 1969 on the file of this Court, and notices were issued to both the parties to file their claim and counter statements on 7th January 1970 and on 17th January 1970 respectively. On 7th January 1970 Sri Shivanand Kamath filed the authorisation in favour of Sri H. Umanath Nayak to represent the I Party, and also filed the claim statement. Sri Jithendra Kumar, Proprietor of the II Party was present that day. Sri Shivanand Kamath also filed the copy of the letter addressed to the Secretary to Government to amend the points of dispute with reference to date of refusal as 14th June 1968. On 17th January 1970 Sri Sheik Ahmed, Clerk of the II Party, filed a memo of the II Party for adjournment. Again on 7th February 1970 Sri Sheik Ahmed for the II Party took time to file the counter statement. On 18th February 1970 none appeared on behalf of the II Party. On 2nd March 1970 Sri N. J. Joshi, Manager of the II Party, took time. On 9th March 1970 none being present on behalf of the II Party, it was treated *ex parte*. On 20th March 1970 Sri N. S. Joshi filed a petition to set aside the *ex parte* proceeding stating that a wrong date as 11th March 1970 instead of 9th March, 1970 had been noted as date of hearing. In the interest of justice the *ex parte* proceedings taken against the II Party on 9th March 1970 was set aside. Sri N. J. Joshi filed the counter statement of the II Party, and in view of the counter statement, additional issues were framed apart from the points of dispute as under on that day :

1. Whether the five workmen, *viz.*, (1) Sumathi, (2) Kumari Kamalakshi, (3) Kumari Sarala, (4) Kumari Pushpa and (5) Kumari Sakku mentioned in the order of reference were working as Supari Garblers and Supari Cutters since 1965 except Kumari Sakku, who joined only in 1967 at M/s. Pandya Jeevanlal & Company ?

2. Subject to the result of additional issue No. 1 whether the four female workers, viz., (1) Srimathi Sumathi, (2) Kumari Kamalakshi, (3) Kumari Sarala and (4) Kumari Sakku are entitled to reinstatement with continuity of service and back wages ?,

3. What is the effect of the Government endorsement No FCL 984 LLD 68, dated 28th March 1969 to the II Party, on this present reference ?

4. What award ?

The next date was fixed as 6th April 1970 for evidence of the I Party. On 6th April 1970 Sri Saduddin; Advocate, filed a joint vakalat along with Mr. Eric Sequiera. He filed a memo to withdraw the former written statement with permission to file a fresh written statement. He also filed the fresh written statement for acceptance in Court. On 17th April 1970 Sri Saduddin filed an affidavit in support of the memo to permit him to file a fresh written statement. Sri H. Umanath Nayak took time to file objections. On 23rd April 1970 he filed the objections, on 27th April 1970 Sri Saduddin filed an application to permit the amendment of the counter statement already filed by accepting the additional written statement already filed along with the application to withdraw the former counter statement. Sri H. Umanath Nayak took time to file the reply. After taking two adjournments, on 6th May 1970 Sri H. Umanath Nayak filed the reply. Arguments of the parties were heard on that day. On 13th May 1970 this Court passed an order whereby the application of the II Party filed on 27th April 1970 was partly allowed by permitting the II Party to amend the former counter statement dated 9th March 1970 by inserting the paras 1 and 2 of the subsequently filed written statement dated 30th March 1970, and the application was partly disallowed so far as the insertion of the paras 4 and 3 contained in the subsequent written sttement was concerned. The I Party was given liberty to amend the claim statement to the extent of the amended counter statement or to file an additional claim statement meeting the legal pleas raised by Amendment of the counter statement. On 17th June 1970 Sri Shivanand Kamath filed additional claim statement. In view of the amend counter statement, an additional issue at Sl. No. 1 (*a*) was framed that day as under :—

> " Whether there is relationship of master and servant between the I Party workmen and the II Party management and whether the present dispute is an industrial dispute, as defined in Section 2 (k) of the Industrial Disputes Act, 1947 ? "

3. The case of the I Party as per the claim statement filed on 7th January 1970 is that the five employees, namely, 1. Smt. Sumathi, 2. Kumari Kamalakshi, 3. Kumari Sarala, 4. Kumari Pushpa and 5. Kumari Sakku, were working as Supari Garblers and Supari Cutters since 1965 except Kumari Sakku who joined only in 1967 at M/s. Pandya Jeevanlal & Company. It is stated that the II Party management M/s. Pandya Jeevanlal Company is running their establishment since about 80 years as tile supplies and other export import goods and employs about eight wokers in areca garbling and cutting section. The management started supari cutting work only since 1964-65 season wherein the above said workers are working. The management on 14th June 1968 refused employment to all the above said workers without assigning any reason whatsoever. The refusal or employment to the workers under reference by the II Party management with effect from 14th June 1968 is unjustified, arbitrary and *mala fide*. The management did not pay wages for 3½ days for the week ending 15th June 1968 to the above said workers. After raising the dispute regarding refusal of employment before the Labour Officer, Mangalore, the management provided work to one of the workers Kumari Pushpa and hence her case is not pressed. The reason behind this refusal of employment is that the Managing Partner asked these workers to work only during night time and not provided work during day time to avoid inspection by the authority under the Shops and Commercial Establishments Act which was resisted by the workers. During the period of refusal of employment Smt. Sumathi was pregnant and the refusal of employmet of woman worker during her pregenancy is illegal. Smt. Sumathi is also entitled to receive maternity benefit from the II Party management. Lastly it was prayed that this court may uphold the contentions of the Party and pass an award to reinstate the workmen under refusal, namely, 1. Smt. Sumathi, 2. Kumari Kamalakshi, 3. Kumari Sarala and 4. Kumari Sakku, with full back wages and costs.

4. In the additional claim statement it is stated that the workers under reference are workmen, working as supari garblers and cutters under the II Party management. The cutting of supari is done on piece-rate basis and garbling on daily-rated basis. While the workers were carrying on garbling work each worker was paid Rs. 1-80 per day *i. e.*, 8 hours work and the wages for cutting was calculated on the outturn. The wages was distributed at the end of the week, *i. e.*, on Saturday every week by the management. The work was to be carried on by the workmen under the supervision and control of the management. The management refused employment to these workmen without any notice and the workmen under reference approached the conciliation officer through the Secretary of the S. K. Coffee, Cardamom and Allied

Workers' Union of which they were members. The dispute under reference is a *bona fide* dispute and comes under the purview of the Industrial Disputes Act, 1947.

5. In the counter statement filed on 20th March 1970 it is stated that their main business is tiles and as a side business they use to buy often five to ten bags supari from the bazar and sell the same in the local market itself. In case if anything is to be garbled they employ two, three women labourers for the same and pay their wages immediatley when they finish their work in the evening, but no regular work was conducted, nor was any mukadam employed. They surprise to the claim of the five employees as they do not know who they are, nor was any wages due to them as they were not having regular supari work. Hence their claim is absolutely false. It is stated further that they are enclosing therewith the original copy of the endorsement from the Secretary to the Government of Mysore, Food, Civil Supplies and Labour Department dated 28th March 1968. It was prayed that this Court may go through the above endorsement and deliver a fair judgement. The amendment to the counter statement allowed by this Court on 13th May 1970 is to the effect that the dispute under consideration is not an industrial dispute as envisaged under the Industrial Disputes Act; 1947, and that there is no relationship of master and servant between the I Party workmen and the II Party management as said down under Section 2(s) of the Industrial Disputes Act, 1947. In view of these pleadings, the above mentioned additional issues were framed on 20th March 1970 and 17th June 1970 apart from the points of dispute.

6. After many adjournments, on 24th November 1970 two witnesses were examined by the I Party as W. W. 1 and W. W. 2, and three documents were got marked as Exs. W. 1 to W. 3. The evidence of the I Party was closed. The II Party got marked one document as Ex. M. 1 during the cross-examination of W. W. 2. On 27th November 1970 adjournment was given for rebuttal evidence of the II Party and arguments. On 28th November 1970 Sri Saduddin, the representative for the II Party, examined two witnesses on behalf of the II Party as M. W. 1 and M. W. 2 and closed the evidence. Sri H. Umanath Nayak filed a memo to call for the documents from the II Party. Documents were ordered to be summoned. The next date was fixed as 2nd December 1970 for arguments. On 2nd December 1970 Sri Saduddin for the II Party stated that he did not receive the summons for the production of documents. So the next date was given as 9th December 1970. On 9th December 1970 Mr. Eric for Sri Saduddin took time for production of documents. On 10th December 1970 Sri Saduddin produced two wages registers and with regard to the attendance registers he stated

that the II Party does not maintain the attendance register. Therefore, it is not produced. He further stated that no separate vouchers were obtained from the workmen and the amount paid to the mukadam for distribution is shown in these two wages registers. With regard to production of the statement showing the purchase of arecanuts for the period from 1964 to 1970 he stated that it is not relevant. In view of the points of dispute and the additional issue No. 1, this Court observed that the statement of accounts for the purchase of supari for the period from 1964 to 1970 is not relevant, and therefore this request of the I Party was rejected. The representative for the parties were directed to advance their arguments on merits on the same day, *i. e.*, on 10th December 1970. Arguments of the representatives for the parties were heard. The payment wages books were ordered to be returned as they were not relied upon by either side.

7. Sri H. Umanath Nayak for the I Party argued that from the counter statement it is seen that the II Party admits the purchases of supari and engaging labourers to garble the same. Therefore, this activity comes under the definition of industry and such a carrying on of the activity also comes under the definition of commercial establishment in view of Section 2(*e*) of the Mysore Shops and Commercial Establishments Act, and it is also proved from the evidence of W. W. 1 that the women workers were engaged and employed by the II Party. Thus the relationship of master and servant is proved and they become workmen in view of the definition of workman given in Section 2(s) of the Industrial Dispute Act. As they were refused employment it should be deemed to be an industrial dispute as per Section 2-A of the Industrial Dispute Act. The activity carried on by the II Party is an industry and the I Party workmen are workmen under the II Party and this dispute is an industrial dispute and therefore this Court is competent to adjudicate upon this dispute. In support of his contention he relied upon the ruling reported in 1964 (II) LLJ 663. He further argued that the evidence given by M. W. 2 as to the wages being distributed through mukadam cannot be taken into consideration because the existence of the mukadam was denied by the II Party in the first counter statement, and this Court did not allow this plea of their being paid through the mukadam in the additional counter statement. So the evidence let in by the II Party in that respect as regards wages being paid to the workers through mukadam cannot at all be taken into consideration. In the alternative he argued that even if it is taken for granted that the wages were paid through the mukadam in view of the evidence of M. W. 1 and M. W. 2 still then the I Party women workers would be deemed to be employees of the II Party and not the employees of the mukadam. In support of this contention he relied

upon the said ruling. He argued further that the contract between the mukadam and the II Party management was not produced to show that the mukadam was engaged to supply labourers to the II Party. In the absence of such a contract the version given by W. W. 1 must be accepted to hold that they are direct employees of the II Party and not through the mukadam. He argued that, that apart M. W. 1 was not in the picture when the dispute arose. The four workmen Smt. Sumathi, Kum-Kamalakshi, Kum. Sarala and Kum. Sakku except Kum. Puspa are entitled to reinstatement with continuity of service and back wages. He also cited the ruling reported in 1970 (II) LLJ 166 on the point that the activity carried on by the II Party is an industry.

8. Sri Saduddin for the II Party argued that the other three workers were not examined in this case. Therefore, it cannot be said that they were workers under the II Party. He relied upon the rulings reported in 1957 (I) LLJ 477. 1958 (II) LLJ 252 and 1961 (I) LLJ. 549. He argued that the beedi contractors are not like mukadams. Therefore, the decision cited by the I Party cannot be considered here. On the other hand, the ruling reported in 1961 (I) LLJ 549 is most applicable to this case. He argued that mere checking the garbling by M.W. 1 does not amount to supervision as laid down in the decision of the Supreme Court reported in A.I.R. 1962 SC 517 and 1957 (II) LLJ 736. He further pointed out to the inconsistency that in Ex. W.1 the workers have stated that they were working since a year but that in the claim statement they are shown to be working from 1965. He contended that in view of this discrepancy the version of W.W.1 as regards the length of their service cannot be believable.

9. I have given my anxious consideration to the able arguments advanced on either side, and now I proceed to consider the additional issue No. 1(a) at the outset. In the ruling reported in A.I.R. 1958 SC 388 (Chintaman Rao and another, Appellants *v.* State of Madhya Pradesh, Respondent) it is held that

> "The concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, *i.e.*, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision".

In 1964 (II) LLJ SC 633 (D.C. Dewan Mohideen Sahib & Sons and another *v.* United Bidi Workers' Union, Salem, and another) dismissing the appeals of the employer it is held that—

> "The conclusion was that the *modus operandi* was adopted to avoid regulations under the Factories Act. The evidence further showed that the so-called independent contractors were themselves employees or agents of the beedi manufacturer. The work of beedi-rolling was done in the premises of the so-called contractors. In the absence of any evidence this way or the other it could not be contended that there was no supervision or control over the work of the bidi-rollers. Further the evidence in regard to the conduct of the bidi manufacturer also showed that the employees were treated as his workmen"

At page 637 it is observed that—

> "This Court pointed out that the nature and extent of control varied in different industries and could not by its very nature be precisely defined. When the operation was of a simple nature and did not require supervision all the time, control could be exercised at the end of the day by the method of rejecting bidis which did not come up to proper standard; such supervision by the employer was sufficient to make the workers employees of the employer and not independent contractors. The nature of the control required to make a person a servant of the master would depend upon the facts of each case".

It is further observed at page 638 that-

> "But there can be no doubt that the workers employed by the so-called contractors are really the workmen of the appellants who are employed through their agents or servants whom they choose to call independent contractors".

In my view the observations made at pages 637 and 638 are very important to be borne in mind to decide the point whether there is relation ship of master and servant between the II Party and the I Party. In the ruling reported in A. I. R. 1962 SC 517 (Shankar Balaji Waje, appellant *v.* The State of Maharashtra, Respondent) it is held that—

> 'An independent contractor is charged with a work, and has to produce a particular result; but the manner in which

> the result is to be achieved is left to him. A servant on the other hand, may also be charged with the work and asked to produce a particular result, but is subject to the directions of the master as to the manner in which the result is to be achieved"

In this ruling the same view which has been expressed in A.I.R. 1958 SC 388 has been reiterated in the words:

> "The concept of employment involves three ingredients (1) employer (2) employee and (3) the contract of employment. The employer as one who employs, *i.e.*, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. Employment brings in the contract of service between the employer and the employee"

In the light of these principles laid down in the said rulings I now proceed to consider in view of the evidence on record whether the I Party has proved that there is relationship of master and servant between the II Party management and the I Party workmen or not. The second part of this issue will be considered after the first part is disposed of.

10. W.W.1. Smt. Sarala, has deposed that formerly she was working in Pandya Jeevanlal & Co., Mangalore as arecanut worker. There were eight workers including herself. Their work was to sort out the arecanuts and cut the arecanut to pieces. The sorting work is done on daily-rated basis and the management pays Rs. 1-80 per worker per day. For cutting the big size arecanuts per bag Rs. 1-80 and Rs. 2-40 for smaller size arecanuts per bag. They were to attend the work at 9-30 to 1 P.M. in the morning and one hour recess in the afternoon. One Manjappu was also working along with them in the sorting and cutting of arecanuts. There is one Mr. Joshi who supervises the work of the employees. The wages were being distributed on every Saturday to the workers. The wages were distributed by Mr. Joshi. She joined the duties in the year 1965. She was refused employment in June 1968. On Manjappu, herself (i.e., this witness), Kamalakshi, Pushpa, Sakku and Ramathi were refused employment by the II Party. Out of these six persons Pushpa was re-employed by the management. She identified her signature on Ex. W.I, which is marked as Ex. W. 1(a). She has stated further that if Joshi was not there wages were distributed by one Manjappu who was working along with them. She further

stated that if they were late on any day they were not allowed to work on that day by the management. In cross-examination she has stated that when she joined the II Party there were six workers working whose names she has stated above and two others (male workers) whose names she does not know. No appointment order was issued to her and there is no contract or agreement between herself and the II Party Mr. Joshi used to come and visit their workspot. There is no instance of taking any disciplinary action by the management against the workers. Her work consisted of picking up of coka, filling up of bags with arecanuts and grading of arecanuts. These works they used to do of their own accord. They never used to submit any leave applications if wanted leave. If they went on leave they did not submit leave applications and did not inform the management before-hand also. There was one mukadam also in their establishment. Mukadam also used to work along with them. Mukadam used to supervise their work. She denied the suggestion that they worked under the control and supervision of the mukadam. The proprietor himself would pay their weekly wages and not through the mukadam. The proprietor himself used to pay their wages in person. there was no stipulation that a worker had to turn out any minimum quantity of work in a day. They were expected to work for eight hours a day. She denied the suggestion that she was employed by Manjappu, the mukadam, and she further denied the suggestion that the work was used to be allóted to them by Manjappu. She denied that they had no work for all the six days in a week, and further denied that mukadam Manjappu used to pick up the required number of workers for each day. She denied further the suggestion that they used to come for work and go out of their own accord and could enter the II Party establishment at any time they liked.

11. The perusal of Ex. W. 1 indicates that the I Partyworkmen admitted working in the II Party concern since about a year and that they were paid wages through mukadam Manjappu. So far as the payment of wages to the workers is concerned it is made out that the wages were paid to the workers through one Manjappu, Mukadam. But no contract entered into between Manjappu and the II Party management showing that Manjappu had undertaken to supply labourers to the II Party was produced, and that, apart, Manjappu was also not examined to prove that the labourers for the II Party used to be supplied by her according to the quantity of work to be performed each day. However to rebut the evidence of W.W.1, M.W.2, Sri N.J. Joshi has tried to speak that there is no relationship of master and servant between the II Party management and the I Party Workers. He has stated that he is the manager in Pandya Jeevanlal & Co., Mangalore.

He is working there since 20 years. Pandya Jeevanlal's main business is tiles and subsidiary business is coir yarn, supari, cardamum, pepper and forest produce. The arecanut business in their concern is not carried on throughout the year. It is a seasonal business. They purchase the supari from the bazzar in bulk. The supari is of different sizes, small and big. They have to get sorted the supari in different sizes, i.e., small and big. Some supari requires cutting and some supari requires sorting only, i.e., discarding the rejected quality. The women workers are doing the sorting work. They inform the mukadam to supply the female workers according to the quantity of work. The mukadam supervises the work of the labourers. They pay wages to the mukadam for making payment to the labourers. They pay 2-20 to the mukadam for a day on the days the mukadam supplies labourers to them. This may be treated as wages or commission for the mukadam for the supply of labour. they tell the mukadam about the quantity of the supari and ask her to supply the number of workers which could finish that work, so the mukadam supplies the labourers each day according to the quantity of each day's work. the strength of the labourers for each day is not fixed. The strength will be varying each day according to the quantity of the work. They want eight hours' work. So it is left to the workers to come at 9 A.M. or 9-3. A.M. They must perform work for eight hours a day. He has stated further that if any worker does not come they do not compel the worker to come to do the the work. The labourers who come for work to their concern for arecanut sorting and cutting are not under their control. He would not be always in the office of the II Party, because he would be out often in connection with the business to make purchases. When he happened, to be in the office he sits in his office. He also checks the labourers during the day time when he returns from the bazzar to see whether they have performed the work or not properly. Checking is also done in the evening after the work is over. In cross-examination he has stated that the supari, pepper, cardamum business is also done on commission basis and also they do direct business after purchasing the supari, cardamum and pepper from the market. In their concern there are only two employees, one himself and the other is Shekhar. He is the manager and Shekhar attends to other office work and bank work. He has further stated that in the last season their supari business was for about 10 to 12 lakhs. It is maintained in the accounts as to how many kilos of supari was sold during the last season. He cannot furnish the figures of the purchase of supari for the last seven years. If the Court issues summons for furnishing the figures they can produce the figures after looking into the accounts. He admitted that no agreement between the M.W.1 and their concern has been entered into for the supply of the labourers to them. He stated that

during the time when Manjappu was mukadam the same practice of paying wages to the labourers through the mukadam was in vogue.

12. The evidence of M.W. 1, Smt. Devaki, is not material to the case through she has tried to give evidence that she is working as a mukadam under the II Party concern, Pandya Jeevanlal. Her work is to provide labour to the II Party whenever required. She is a mukadam is five or six concerns, namely Mysore Trading Corporation Mangalore. Shanteri Kamalakasha, Bunder, Mangalore, Mysore Coffee and Fertiliser, Mangalore, etc. All these concern are situated at Bunder, Mangalore. She supplies labour to them also. She is supervising the work of the labourers. On Saturdays she distributes the wages to the labourers. The managenent pays her all the wages of the labourers to be paid to them. In case of supplying of the labourers she also gets the wages for one day at the rate of Rs. 2-20 as commission. She does not work along with the labourers supplied by her. The labourers should come for work at 9 A.M. as per her directions. If they do not come for work the workers inform her. She supplies the labourers in view of the work to be performed. The number of workers will be varying each day. Since more than two years she is mukadam under the II Party. But she showed her ignorance as to her knowing Kamalakshi and Sakku, labourers, but stated that she knows Sarsia, Sumathi and Puspa, and denied to their having worked under her. In cross examination at page 3 she clearly stated that she was not in the II Party management when the I Party workmen were working with the II Party management. She came there after the I Party workmen were not there. In view of this admission of her, even if it is taken for granted that her version as regards the mukadam supplying he labourers to the II Party is true, his statement of her cannot go against the I Party as she was not the mukadam when the dispute arose, and when these women workers were working under the II Party. On the other hand, Manjappu was mukadam but Manjappu was not produced to substantiate that in fact Manjappu was supplying labourers to the II Party according to the quantity of work to be performed each day.

13. M.W. 2 has stated that the arecanut business in their concern is not carried on throughout the year and that it is a seasonal business. But they have not produced any documentary evidence to prove this business to be only seasonal. In the absence of any documentary evidence in this regard, it will have to be presumed that the arecanut business is carried on by the II Party throught the year. It is admitted by M.W. 2 that they purchase supari from the bazaar in bulk. But nowhere in his deposition he stated that they are not purchasing the

supari from the bazaar throughout the year. That apart, if they are purchasing supari only during the season of supari and not at other time of the year, they could have easily proved this fact by producing documentary evidence which the II Party can be presumed to be in possession of it. He has admitted that during the last season the supari business was for about 10 to 12 lakhs and it is maintained in the accounts that how many kilos of supari was sold during the last year. In view of this version of this, the II Party could have easily proved by producing the accounts of the last year that they did their business in supari for a particular period of the year during the last year and that for the remaining period of the last year they had no business of supari at all. But the II Party has failed to do so.

14. In the absence of any contract between Manjappu and the II Party with regard to supply of labour and Manjappu not being examined to substantiate the stand of the II Party, and further the factum of the business of supari carried on by the II Party being seasonal not being established by any documentary evidence, I do not find any reason to disbelieve the testimony of W.W. 1 which reflects on the fact that she and other employees were under the direct employment of the II Party though they were paid wages through mukadam Manjappu.

15. Payment of wages through mukadam to these women workers does not establish that the employees were under the employment of mukadam. Mukadam can be treated in my view as an agent of the II Party and these I Party workers may be treated as employees of the II Party through this agent as observed by the Supreme Court in the ruling reported in 1963 (II) LLJ 633 at page 638 referred to above.

16. The nature of the work in this case does not require any particular type of supervision or control by the II Party, and the type of supervision and control which M.W. 2 had over these workers can be considered as sufficient to hold that the I Party workers were under the supervision and control of the II Party. Because M.W. 2 has stated in his examination-in-chief itself that he also checks the labourers during the day time when he returns from the bazaar to see whether they have performed the work or not properly. He further admitted that checking is also done in the evening after the work is over. I think this type of checking of the work during the performance of their work and after the performance of the work is over could be deemed to be supervision and control of such a nature over the work of the I Party workers by the II Party through M.W. 2 as would be quite sufficient to originate relationship of master and servant between them, in the light of the rulings reported in 1958 (II) LLJ 252 and A.I.R. 1962

SC 517. Hence I conclude on what has been discussed above, that there is relationship of master and servant between the II Party management and the I Party women workers.

17. Now I come to the second part of the additional issue No. 1 (*a*). W.W.1 has clearly stated that they were refused employment and W. W. 2, Sri Shivananda Kamath, Trade Unionist, as deposed that he knows the worker W.W. 1, Sarala. She is a member of their union, S.K. Coffee-Cardamum & Allied Workers' Union, Mangalore. Ex. W. 1 was drafted by him. The five workers signed Ex. W. 1 and are members of their union. He represented these workers before the conciliation officer. He had gone to the office of the management for negotiations regarding the refusal or employment of the workers under reference. Ex. W. 2 is the remarks submitted by the II Party management to the Labour Officer on their complaint. Ex. W. 3 is his counter statement for the remarks made by the management before the Labour Officer. Ex. W. 3 (*a*) is his signature. When he went and approach the management regarding refusal of the work to the workers the management refused to reinstate the workers. The management also refused to pay the 3½ days' wages payable to the workmen. Since the employees refused to work in the night the management refused to pay the wages at the time of refusal of employment. He further stated that the management said that if the workers agree to come and work in the night than only it would entertain them back into service. Therefore, the negotiations failed. There is no reason to disbelieve the version of this witness. In Ex. W. 2 the II Party has stated that the management has not refused work to anybody but the collies themselves have stopped the work as per instruction of mukadam Manjappu to harass the management, and due to that the management has to suffer a loss, and that for this the complainant would be held responsible. The management has not to pay a single Naye Paise to the complainant. Except this exhibit there is no other evidence to rebut the testimony of W.W. 2 and W.W. 1 with regard to the employment being refused to the women workers under reference. In my view the evidence of W.W. 1 and W.W. 2 is sufficient to establish that they were refused employment. Refusal of employment is tantamount to termination of service. Therefore, this case falls within the purview of Section 2-A of the Industrial Disputes Act, 1947. Hence the present dispute will be a deemed industrial dispute. There is no controversy with regard to the supari business carried on by the II Party to be an industry or not. Therefore, the ruling cited by the I Party reported in 1970 (II) LLJ SC. 266 is not relevant to this case.

18. The I Party women workers are found to be workers under the employment of the II Party, and the refusal of employment to them is

proved. Therefore, the present dispute will be a deemed industrial dispute as defined in Section 2-A of the Industrial Disputes Act, 1947. When it is a deemed industrial dispute there is no need to consider the definition of 'industrial dispute' given in Section 2 (*k*) of the Industrial Disputes Act, 1947. Hence accepting the contentions of Sri H. Umanath Nayak to be substantial and sound and rejecting the contentions of Sri Saduddin for the II Party to be devoid of substance, the additional issue No. 1 (*a*) is answered in the terms, that there is relationship of master and servant between the II Party management and the I Party women workers, and the present dispute is a deemed industrial dispute as contemplated in Section 2-A of the Industrial Disputes Act, 1947 and this court is comptent to adjudicate upon it.

19. Now I turn to the additional issue No. 1. This issue cannot be fully answered in favour of the I Party as to the length of service of the women workers, because in Ex. W. 1 they have admitted to be working since only one year, and the date of refusal of employment is shown as 14th June, 1968. Therefore, it cannot be said that they were working as supari garblers and supari cutters since 1965 as alleged in the claim statement. On the other hand, in view of Ex. W. 1 they will be found to be working since only one year prior to the dispute arose, *i.e.*, prior to 4th June, 1968. This will be my answer to the additional issue No. 1.

20. In view of the finding on the additional issue No. 1 (*a*), the first point of dispute is answered in the terms that the management of M/s. Pandya Jeevanlal & Co., Mangalore is not justified in refusing employment to the women workers Smt. Sumathi, Kum. Kamalakshi Kumari Sarala, Kumari Puspa and Kumari Sakku.

21. Now I advert to the additional issue No 2 and the second point of dispute. No doubt in view of the findings on the point No. 1 of the points of dispute and the additional issue No. 1 (*a*), the four female workers, namely, Smt. Sumathi, Kumari Kamalakshi, Kumari Sarala and Kumari Sakku are entitled to reinstatement with continuity of service. But whether they are entitled to full back wages is the question now to be considered. The evidence of W.W. 1 is silent as other being unemployed from the date of refusal of employment by the II Party, and the other three female workers, namely, Smt. Sumathi, Kumari Kamalakshi and Kumari Sakku have also not examined themselves to establish that they are unemployed from the date of refusal of employment by the II Party. There being no evidence as to their remaining unemployed from the date of refusal of employment by the II Party, I do not think it proper to award any back wages to the afore-said female workers, in the light of the recent ruling of the Bombay High court

reported in XXXVII (1970) F.J.R. Bombay 412. Therein it is held that—

> "When making an award reinstating a workman who has been wrongfully dismissed by the employer, the Labour Court cannot award full back wages unless the workman proves that he remained unemployed, in spite of his efforts to minimise his loss, during the period of his dismissal."

Hence I conclude that the afore-said four women workers are entitled to reinstatement with continuity of service since one year prior to the date of refusal of employment to them by the II Party but they are not entitled to any back wages. Hence the additional issue No. 2 and the second point of dispute are answered accordingly. This is to be noted here that the case of the worker Kumari Puspa is not pressed, since the management has provided her work after the raising of the dispute regarding refusal of employment before the Labour Officer, Mangalore. This is admitted in para 6 of the claim statement dated 7th January, 1970. W.W. 1 also admitted that Smt. Puspa was re-employed by the management. So in relief is liable to be granted to her.

21(a). Now I come to the additional issue No. 3. The Government endorsement dated 28th March 1969 bearing No. ECL 984 LLD 68 filed by the II Party shows that the Government does not merit reference for adjudication because of the fact tat the worker concerned was a temporary worker and had just put in only three months' service. But the present reference relates to five female workers and it is dated 15th December, 1969. Thus this is a subsequent reference made after an interval of more than five months from the first endorsement referred to above. That apart, the first endorsement relates to one worker, whereas this present reference relates to five women workers and aside from that the Government is quite competent to reconcider the matter and refer the matter for adjudication even if the same matter was rejected before on the ground of not meriting reference for adjudication. This view of mine is also forfeited by the rulings reported in 1963 (II) LLJ Mysore 717 and 1968 (II) LLJ Rajasthan 682. In the ruling reported in 1963 (II) LLJ Mysore 717 (Vasudeva Rao (B. K.) v. State of Mysore and others, it is held that—

> 'It is also well settled that an order of the Government making the reference is an administrative act and not a quasi judicial one, and that Government is the sole judge in regard to the factual existence of an industrial dispute and of the expediency of areference. It is hardly open to doubt that, as the power under S. 10 (1) of the Industrial Disputes Act has been conferred upon Government in the interest of industrial peace the amplitude of the powers cannot be curtailed by the

importation of other principles unless there is any warrant for them in the statute itself. It follows that even if at one stage Government had came to the conclusion that no reference was called for in the interest of industrial peace, it may re-examine the matter, whether in the light of fresh material or otherwise, and make a reference if it comes to the conclusion that a reference is justified, in the interest of industrial peace."

In the ruling reported in 1968 (II) LLJ Rajasthan 682 (Good year (India), Ltd., Jaipur *v.* Industrial Tribunal, Rajasthan, Jaipur, and others) it is held that—

"It is well-settled that in making a reference under Section 10 (1) (1) of the Act the Government is doing an administrative Act. It is neither judicial nor quasi-judicial.

Being an administrative act, it is open to the Government to give a different decision on ground of expediency or it is found that its earlier order lacked proper consideration. A decision under Section 12 (5) not to make a reference is an administrative act and not a judicial or quasi-judicial adjudication and such a decision not having been invested with statutory finality by any provision of the Act, the Government can re-examine the question and make a reference under Section 10 (1) if it is of the opinion that an industrial dispute exists or is apprehended. The earlier decision by the Government not to make a reference does not operate as *resjudicata*. The fact that the appropriate Government had refused to refer an industrial dispute for adjudication could not bar the Government from subsequently referring the same dispute for adjudication provided the conditions mentioned in Section 10 (1) are satisfied".

That being the position, the Government endorsement in FCL 984 LLD. 68, dated 28th March 1969 does not affect the present reference. This will be my answer to the additional issue No. 3.

22. Now remains the additional issue No. 4 as to 'what award'. In view of the findings on the additional issues No. 1 (*a*), 1, 2 and the points of dispute 1 and 2, I make the following award :

AWARD

The reference is answered in the terms that the management of M/s. Pandya Jeevanlal & Co., Mangalore is not justified in refusing employment to the women workers, namely, Smt. Sumathi, Kumari Kamalakshi, Kumari Sarala, Kumari Puspa and Kumari Sakku. The women workers Smt. Sumathi, Kumari Kamalakshi, Kumari Sarala

and Kumari Sakku are held entitled to reinstatment with continuity of service since one year prior to 14th June, 1968, the date of refusal of employment to them by the II Party. No order is passed with regard to the worker Kumari Puspa, since her case is not pressed she being provided with work by the II Party management as indicated above. The said four women workers are held not entitled to any back wages.

The II Party shall reinstate the women worker Smt. Sumathii Kumari Kamalakshi, Kumari Sarala and Kumari Sakku except Kumar, Puspa with continuity of service since one year prior to 14th June, 1968, the date of refusal of employment to them by the II Party within one month from the date of publication of this award in the official Gazette of the Government of Mysore.

In the circumstances of this case, the parties shall bear their respective costs of this reference.

MANGALORE,
15*th December* 1970

MOHD HAMEEDUDDIN KHAN,
Presiding Officer,
Labour Court, Mangalore.

ORDER

Bangalore dated 24th December 1970.

S. O. 248.—WHEREAS by State Government Order No. FCL 989 LLD 68, dated 15th December 1969 the Industrial Dispute between the workmen and the management of M/s. Pandya Jeevanlal & Co., Mangalore was referred to the Labour Court, Mangalore for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE in exercise of the power conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

(No. FCL 277 LLA 70.)

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.